

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION**

<b>IN RE:</b>	)	
	)	
<b>RUBEN MARIO PENA, JR.,</b>	)	<b>CHAPTER 13</b>
	)	<b>CASE NO. 18-04935-5-JNC</b>
<b>DEBTOR.</b>	)	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

COMES NOW Performance Finance (“Performance”), a division of Evergreen Bank Group, pursuant to 11 U.S.C. §362(d), and moves for relief from the automatic stay herein as follows:

1. The Debtor commenced this case by the filing of a Chapter 13 petition on October 9, 2018.
2. On or about October 21, 2016, the Debtor borrowed the sum of \$15,067.01 pursuant to the terms of that certain Promissory Note, Disclosure And Security Agreement of even date (the "Contract"). A copy of the Contract is attached hereto marked Exhibit 1.
3. Under the terms of the Contract, Performance was granted a senior security interest in that certain 2016 Indian Chief Dark Horse Motorcycle, VIN 56KCCDAA6G3340422 (the "Vehicle"), which it duly perfected. See Exhibit 2.
4. The confirmed Chapter 13 Plan calls for the payments due under the Contract to be made directly to Performance. As of October 18, 2021, the payments due under the Contract were in arrears for the August 19, 2021 and September 19, 2021 payments for a total arrearage of \$515.78.
5. As of October 18, 2021, the net payoff amount due under the Contract was \$5,895.17. At the same time, the base NADA wholesale value of the Vehicle was approximately \$9,385.00. See Exhibit 3.
6. The Debtor has decided to surrender the Vehicle to Performance and Performance seeks relief from stay in order to obtain possession of and dispose of the Vehicle.
7. Under these circumstances, Performance does not have adequate protection of its security interest in the Vehicle, and thus there is good cause to grant Performance relief from the automatic stay under 11 U.S.C. §362(d).
8. If Performance is not permitted to foreclose its security interest in the Vehicle, it will suffer irreparable injury, loss and damages.
9. Due to the nature of the Vehicle as being a depreciating asset that is easily moved, easily secreted and easily damaged, Performance also hereby requests that any order granting the relief requested herein be immediately effective.

WHEREFORE, Performance moves the Court for the following relief:

1. The Court enter an Order pursuant to 11 U.S.C. §362(d) lifting the automatic stay to permit Performance to foreclose its security interest in the Vehicle in accordance with its loan documents and applicable law.
2. The 14-day stay provided for in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived and the lifting of the automatic stay be effective immediately.
3. The Debtor be ordered to release the Vehicle to Performance or advise Performance of the location of the Vehicle and the name, address, and telephone number of any third party in possession of same.
4. Performance be allowed 120 days to file a general unsecured claim in this case for any outstanding deficiency balance remaining after sale or subsequent disposition of the Vehicle.
5. Performance have such other and further relief as to the Court seems just and proper.

This the 29th day of October, 2021.

KIRSCHBAUM, NANNY, KEENAN & GRIFFIN, P.A.

By: s/ Pamela P. Keenan  
Pamela P. Keenan  
N.C. State Bar No. 20328  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day, she served a copy of the foregoing on the parties in interest either electronically or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service, in a postage-paid envelope, addressed as follows:

Ruben Mario Pena, Jr.  
1516 Timberrock Ct.  
Fayetteville, NC 28306

Mark M. Harris  
309 Person St.  
Fayetteville, NC 28302

Joseph A. Bledsoe, III  
PO Box 1618  
New Bern, NC 28563

This the 29th day of October, 2021

s/ Gwen T. Best

Gwen T. Best  
Paralegal

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**NOTICE OF MOTION**

NOTICE IS HEREBY GIVEN of the MOTION FOR RELIEF FROM THE AUTOMATIC STAY filed with the Court and served herewith. This notice is given and served as of the date indicated below.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the motion, or if you want the Court to consider your views on the matter, then on or before November 15, 2021, unless otherwise ordered by the Court, you or your attorney must file with the Court, pursuant to Local Rule 9013-1 and 9014-1, a written response explaining your position, and a request for hearing addressed to:

U.S. Bankruptcy Court  
PO Box 791  
Raleigh, NC 27602

If you mail your request for hearing to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You must also send a copy to:

Pamela P. Keenan Attorney for Performance Finance PO Box 19766 Raleigh, NC 27619	Joseph A. Bledsoe, III Chapter 13 Trustee PO Box 1618 New Bern, NC 28563
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If a response and a request for hearing is filed in writing within the time indicated above, a hearing will be conducted on the pleading and response at a date, time and place to be later set by the Court and all parties will be notified accordingly. Any party requesting a hearing shall appear at the hearing in support of their position or may be assessed with costs.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought and may enter an order granting the relief requested without conducting a hearing.

This the 29<sup>th</sup> day of October, 2021

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.

By: s/ Pamela P. Keenan  
Pamela P. Keenan  
N.C. State Bar No. 20328  
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